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1100 Ravinia Place • Orland Park, IL 60462

RECORDATION NO. 21656 FILED

SEP 21 '98

9-36AM

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Of Counsel:
David Dineff
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Thomas Grotta
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September 11, 1998

Office of the Secretary
Surface Transportation Board
12th Street & Constitution Ave., N.W.
Washington, D.C. 20423-0001

RE: Lease of Locomotive Equipment
National Railway Equipment Co., Lessor
Burlington Northern and Santa Fe Railway Company, Lessee

Dear Secretary:

I have enclosed an original and one copy of the document described below to be recorded pursuant to Section 11303 of Title 49 of the U.S. Code.

This document is a lease of locomotive equipment and is a primary document dated October 24, 1997. The names and addresses of the parties to the documents are as follows:

Lessor: National Railway Equipment Co.
14400 So. Robey
P.O. Box 2270
Dixmoor, IL 60426

Lessee: Burlington Northern and Santa Fe Railway Co.
Hill Building (NOC)
2600 Lou Menk Drive
Fort Worth, TX 76131

A description of the equipment covered by the document follows:

<u>Unit No.</u>	<u>Type</u>	<u>General Description</u>
3065	SD40	Road Locomotive
3076	GP40	Road Locomotive
3107	SD40	Road Locomotive
3140	GP40	Road Locomotive
3186	SD40	Road Locomotive

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5339	SD45	Road Locomotive
5486	B30-7	Road Locomotive
5487	B30-7	Road Locomotive
5488	B30-7	Road Locomotive
5489	B30-7	Road Locomotive
6564	SD40-2	Road Locomotive
7200	GP40X	Road Locomotive
8147	C30-7	Road Locomotive
9323	C30-7	Road Locomotive
9503	C30-7	Road Locomotive
9525	C30-7	Road Locomotive
9531	C30-7	Road Locomotive
9538	C30-7	Road Locomotive
9541	C30-7	Road Locomotive
9553	C30-7	Road Locomotive
9561	C30-7	Road Locomotive

A fee of \$24.00 is enclosed. Please return the original after recordation to:

Richard F. Loritz
1100 Ravinia Place
Orland Park, IL 60462

A short summary of the document to appear in the index follows:

A lease of locomotive equipment identified as three (3) locomotives, types SD40 Road Locomotives, two (2) GP40 Road Locomotives, one (1) SD45 Road Locomotive, four (4) B30-7 Road Locomotives, one (1) SD40-2 Road Locomotive, one (1) GP40X Road Locomotive and nine (9) C30-7 Road Locomotives, with National Railway Equipment Co., as Lessor, and Burlington Northern and Santa Fe Railway Co., as Lessee.

Very truly yours,
NATIONAL RAILWAY EQUIPMENT CO.
an Illinois Corporation

BY: Richard F. Loritz /R
RICHARD F. LORITZ

ITS: Attorney and Agent in Fact

RFL/

Enclosures

nrec#911.98m

LOCOMOTIVE LEASE AGREEMENT

SEP 21 '98

9-36AM

THIS LOCOMOTIVE LEASE AGREEMENT ("Lease"), entered into as of the 24th day of October, 1997, between NATIONAL RAILWAY EQUIPMENT COMPANY, an Illinois corporation, ("LESSOR"), and THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY, ("LESSEE").

LESSOR AND LESSEE HEREBY AGREE AS FOLLOWS:1. LEASE AND LEASED PROPERTY

Lessee hereby leases from Lessor, the locomotive(s), ("Locomotives"), together with the parts, accessories, attachments and devices, if any, now or hereafter affixed thereto, as described in Schedule "A" attached to and made part hereof.

2. TERM

The term of this Lease for each Locomotive shall be the fixed term set forth in Schedule "A". Upon termination of the lease, Lessee shall effect prompt delivery of the Locomotive(s) to Lessor at Silvis, Illinois.

3. RENTAL

- A. The rental payable shall be the sum identified in Schedule "A" payable monthly in arrears. Lessee shall operate such Locomotive(s) in conformity with its use of Locomotives it owns and leases. If the Commencement Date for any locomotive does not fall on the first day of the month, the first rental payment shall be prorated accordingly.
- B. Payments past due for more than ten (10) days shall bear interest at the prime rate as published in the Wall Street Journal from time to time plus two percent (2%). Payments shall not be considered past due if made within ten (10) days from the close of the month or ten (10) days from receipt of invoice, whichever is later.
- C. All rentals shall be paid to Lessor at National Railway Equipment Company, 135 LaSalle, Dept 1473, Chicago, IL 60674 or at such other address as Lessor may direct in writing.

4. TAXES

- A. Taxes Indemnified. Lessee shall be responsible for the payment of all sales or use taxes (provided that this lease is executed or in effect at the time of the sale of the

4. **TAXES CONTINUED**

Locomotives to Lessor), license, property, ad valorem, or rental taxes imposed by the United States of America or any other state or political subdivision thereof upon the Lessor, Lessee or the Locomotives if such tax is related to the acquisition, use or operation of the Locomotives. All property and ad valorem tax payments shall be made by Lessee directly to the taxing or levying authority.

- B. **Taxes Excluded.** Nothing herein shall be construed to require the Lessee to be responsible for (i) taxes included in the cost of the Locomotives; (ii) taxes imposed by any federal, state or local government, or any political subdivision thereof which are based upon, measured by or in respect to net income (including all taxes which are in substitution for, in the nature of, or in lieu of a net income tax); (iii) taxes on items of preference or any minimum tax; (iv) value added taxes; (v) business or occupation taxes; (vi) franchise taxes; (vii) taxes based upon the Lessor's capital stock or net worth; or (viii) fines and penalties to the extent due to the acts or omissions of Lessor.
- C. **Tax Filings.** To the extent that it is legally permissible, Lessee shall timely prepare and file all reports and returns which are required to be made with respect to any obligation of Lessee arising out of Section 4A hereof.
- D. **Contest.** Lessee shall have the right to contest or protest, in Lessee's own name, any tax for which it is responsible, provided only that such contest will not result in any material danger of sale, forfeiture, or loss of the Locomotives. If a written claim is made against the Lessor for taxes with respect to which the Lessee may be liable, the Lessor shall immediately give the Lessee notice in writing of such claim and shall furnish the Lessee with a copy of the claim received from the taxing authority. Failure of the Lessor to provide Lessee with immediate notice shall release Lessee from any liability relating to said claim to the extent the Lessee suffers any irreparable harm which Lessee could have avoided had Lessee received timely notice. If Lessee is not able to contest any tax for which it is responsible in its own name, Lessor shall, if requested by Lessee, contest in its own name the validity, applicability or amount of such tax.

5. **OWNERSHIP AND LESSOR'S INSPECTION**

- A. The Locomotive(s) shall at all times remain the sole and exclusive property of the Lessor.

5. OWNERSHIP AND LESSOR'S INSPECTION CONTINUED

- B. Lessee may add such equipment to the Locomotives as it uses in its operations, including radios and radio display units, and may retain them at lease end.
- C. Lessor shall keep the Locomotive(s), at all times, free and clear from all claims, liens and encumbrances, provided, however, that Lessee shall be under no obligation to pay or discharge any such claim, lien or encumbrance so long as it is contesting in good faith and by appropriate legal proceedings such claim, lien or encumbrance and the nonpayment thereof does not, in the reasonable judgement of the Lessor, result in any material danger of sale, forfeiture, or loss of the Locomotives.
- D. This Lease is intended to be a true lease of the Locomotive(s) and is not and in no way shall be construed as creating a sale of the Locomotive(s) to Lessee.

6. DELIVERY/RETURN

Delivery of the Locomotive(s) shall be accepted by Lessee at Silvis, Illinois or another tax-exempt jurisdiction acceptable to Lessee. Upon expiration or other termination of this Lease, Lessee shall return such Locomotive(s) to Lessor at Silvis, Illinois, in the same condition as when accepted, ordinary wear and tear excepted.

7. LESSEE'S INSPECTION/WARRANTY DISCLAIMER

- A.
 - i. Lessee hereby acknowledges that Lessee has had or will have the opportunity to inspect the Locomotive(s) prior to accepting delivery of same, and that acceptance of delivery of the Locomotive(s) by Lessee constitutes acknowledgment that they have been received in running order.
 - ii. Except as provided in Section 8, Lessor shall not be responsible for any repairs or maintenance of the Locomotive(s) during the term of this Lease.
- B. Delivery to and acceptance of the Locomotive(s) by, and execution of this agreement with respect thereto by Lessee shall constitute Lessee's acknowledgment that the locomotive(s) are of the manufacture, design and utility, quality and capacity selected by the Lessee, that Lessee is satisfied that the same is suitable for Lessee's purpose and that, except as otherwise provided in Section

7. LESSEE'S INSPECTION/WARRANTY DISCLAIMER CONTINUED

8, LESSOR MAKES NO REPRESENTATION OR WARRANTY EXPRESS OR IMPLIED, WITH RESPECT TO THE CONDITION, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OF THE LOCOMOTIVE(S), and Lessor hereby disclaims all such representation and warranties.

8. USE AND MAINTENANCE

Lessee agrees that:

- A. Lessee shall be responsible and pay for all registrations, certificates, and permits, and all other similar requirements of governmental authorities, whether required to be obtained in the name of the Lessor or Lessee.
- B. The Locomotive(s) shall be used and operated only by properly qualified, trained and registered personnel authorized by Lessee.
- C. Lessee shall comply with all applicable laws and regulations relating to the lease, possession, use and operation of the Locomotive(s). If, while the Locomotives are leased to Lessee, any modifications to the locomotives shall be required by any government or other authority having jurisdiction over the Locomotives, then the Lessee shall redeliver such Locomotives to Lessor who will make such modifications. The rent for such Locomotives shall abate from the date such Locomotives are delivered by Lessee to the repair facility designated by Lessor until the date Lessor notifies Lessee that such Locomotives are available for pick up. The Replacement Value of the Locomotives will be increased by the cost of modifications. Such modification will be the property of the Lessor. The rental rate for such Locomotives will be increased by the cost of such modifications, divided by the remaining life (in days) of the Locomotives, assuming a mutually agreed to year life, provided, however, in the event that the rental rate for such Locomotives is increased by more than ten (10%) as a result of such modification, Lessee may terminate this Lease for any such Locomotives effective the date such rental increase is scheduled to be effective.
- D. The Lessee shall use the Locomotives only in the manner for which designed and intended and so as to subject them only to ordinary wear and tear. Lessee will, at its sole expense, perform all repair and maintenance work,

8. USE AND MAINTENANCE CONTINUED

servicing, lubrication and inspection of the Locomotives in accordance with Lessee's existing maintenance practices. Lessor agrees to accept responsibility for any catastrophic failure defined hereinafter.

- i. A "catastrophic failure" is defined as the following events causing the locomotive to be inoperative due to failure of one the following components, excluding Lessee's negligence

(a) turbocharger, (b) diesel engine, (c) engine crankshaft, (d) AR-10 alternator, (e) locomotive wiring and (f) any more than four (4) power assemblies changed simultaneously at any given period during the lease term (g) compressor.

- E. If, in the opinion of the Lessee, any locomotive(s) is not performing satisfactorily, then Lessor will be so notified in writing and provided the opportunity to remedy the problem within thirty (30) days, either at the Lessor's or Lessee's facilities. If the locomotive(s) cannot be returned to satisfactory operating performance within thirty (30) days of such notification, the subject locomotive will be removed from the Lease and replaced with a similarly sized locomotive from the Lessor's fleet. Rent shall abate during all periods that the Lessee is unable to use the Locomotives in revenue service due to a catastrophic failure or failure to perform satisfactorily.

9. INDEMNIFICATION

Lessee does hereby agree to defend, indemnify, protect and hold harmless Lessor and any assignees or successors of Lessor, and their respective employees and agents, from and against any and all losses, liabilities (including without limitation strict liability imposed by law), damages, injuries, claims, demands and expenses (including legal expenses) of whatsoever kind and nature, resulting from or arising out of the use, condition, or operation of any Locomotive (together, "claims"). This covenant of indemnity shall continue in full force and effect notwithstanding the termination of this lease or the termination of the lease of any Locomotive.

- A. Except as otherwise provided in Section 8, Lessee assumes and agrees to indemnify, protect and hold free and harmless Lessor, any assignee or successor of Lessor, and their respective employees or agents, irrespective of any responsibility for negligence, from any loss, damage, theft or destruction of any locomotive.

9. INDEMNIFICATION CONTINUED

- B. In case of total destruction of any or all of the Locomotives, Lessee shall pay Lessor, per Locomotive, the amount stated as Replacement Value in Schedule "A". Daily lease rental shall continue on such locomotive(s) until such time that Lessee has issued payment to Lessor via bank check or bank wire transfer.

Notwithstanding anything to the contrary set forth elsewhere herein, Lessee shall not be required to indemnify, defend or hold harmless from and against any Claim to the extent such Claim arises out of the gross negligence or willful misconduct of the Lessor. In addition, Lessor agrees to indemnify, defend and hold Lessee harmless from and against any and all loss, claims or liability which Lessee may suffer arising from any injury to, or death of, any person or any damage to any property arising out of the presence on Lessee's property of Lessor, its employees, agents, servants or designees (whether in exercising any rights Lessor may have to reclaim the Locomotives or otherwise), except that Lessor shall not be liable to the extent such loss, claims or liability are the result of Lessee's gross negligence or willful misconduct.

10. ASSIGNMENT AND LIENS

Lessor shall have the unconditional right to assign this lease, in whole or in part. Lessee shall have no right to assign or sub-lease this lease or any other of the Locomotive(s) or any interest therein.

11. DEFAULT

- A. Lessee shall be in default under this Lease upon the happening of any of the following events or conditions ("Event of Default"):
- i. Default in the payment when due of any installment of rental hereunder or of any other obligation for the payment of money now or hereafter owed by Lessee to Lessor, which continues for five (5) days after notice to Lessee that such payment is past due.
 - ii. Default in the timely performance of any other liability, obligation, covenant or agreement hereunder of Lessee after written notice to Lessee and a reasonable time to cure.

12. REMEDIES UPON DEFAULT

- A. Upon the occurrence of any Event of Default or at any time hereafter, Lessor, in its sole discretion, may take any one or more of the following actions with respect to the Locomotive(s):
- i. Collect from Lessee (i) any unpaid rent for all periods up to and including the date the Locomotives are returned to Lessor, (ii) an amount equal to the present value (discounted at the rate, on the date of such termination, for U.S. Treasuries for a term approximately equal to the remainder of the relevant term) of the rent for the Locomotives which would have been payable during the remainder of the relevant term minus the present value (discounted at the rate, on the date of such termination notice, for U.S. Treasuries for a term approximately equal to the remainder of the relevant term) of the market rent for the Locomotives computed for the same lease term, and (iii) all other sums due Lessor from Lessee hereunder.
 - ii. Terminate the lease of any or all Locomotives by written notice to Lessee.
 - iii. Whether or not the lease is terminated, take possession of any or all Locomotive(s) wherever found, and for this purpose Lessor may at Lessor's option enter upon the premises where such Locomotive(s) are located and take immediate possession of and remove the same, all without liability to Lessee for damage to property or otherwise for actions taken in a commercially reasonable manner.
 - iv. Require that Lessee shall, upon written demand by Lessor and at Lessee's expense, promptly make available to Lessor at Lessee's expense, any or all Locomotives at a places designated by Lessor on Lessee's lines which is reasonably convenient to both parties.
 - v. Proceed by appropriate action either at law or in equity to enforce performance by Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof or to rescind the lease hereunder of any or all Locomotive(s).

12. REMEDIES UPON DEFAULT CONTINUED

- vi. Exercise any and all rights and remedies available to Lessor under any applicable law. In addition, Lessee shall be charged with and shall pay to Lessor all reasonable costs and expenses of Lessor incurred as a result of each Event of Default by Lessee.
- B. None of the rights and remedies under or referred to in this Paragraph 12 is intended to be exclusive, but each such right or remedy shall as to each Locomotive be cumulative and may be availed of separately or concurrently with or in addition to any other right or remedy provided or referred to herein or otherwise available to Lessor at law or in equity. Any repossession or subsequent sale or lease by Lessor of any Locomotive(s) shall not bar an action against Lessee for a deficiency. To the extent permitted by applicable law, LESSEE WAIVES ANY AND ALL RIGHTS TO NOTICE AND TO A JUDICIAL HEARING WITH RESPECT TO THE REPOSSESSION OF EQUIPMENT BY LESSOR IN A COMMERCIALY REASONABLE MANNER AS A RESULT OF ANY EVENT OF DEFAULT HEREUNDER BY LESSEE.
- C. Without limitation of any rights of Lessor otherwise existing or otherwise available to Lessor, it is expressly covenanted and agreed by the parties hereto that in the event of any bankruptcy of Lessee within the meaning of the Federal Bankruptcy Act, then Lessor may, at Lessor's election, terminate this Lease.

13. RECORDATION OR LESSOR'S INTEREST

Lessee agrees to execute all recording documents requested by Lessor to show Lessor's interest in the locomotive(s). Lessee further agrees to execute financial statements or other documents evidencing Lessor's interest in the locomotive(s).

14. MISCELLANEOUS

- A. This Lease and all rights and obligations hereunder shall be governed by and construed in accordance with the laws of the State of Illinois.
- B. Neither this Lease nor any schedule shall be amended, and no provision hereof or of any Schedule shall be waived or varied unless by a writing signed by the parties.

14. MISCELLANEOUS-CONTINUED

- C. No delay or omission by Lessor in exercising any right hereunder shall operate as a waiver of such right or any other right. A waiver by Lessor of any Event of Default by Lessee shall not be construed as a waiver of any future occasion.
- D. In case any provision (or portions thereof) in this Lease shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions (or portions thereof) hereby shall not in any way be affected or impaired thereby.
- E. This Lease shall be binding upon and inure to the benefit of Lessor and Lessee and their respective successors.
- F. All notices permitted or required to be given pursuant to this Lease shall be sent by nationally recognized overnight courier or mailed by Certified or Registered Mail, Return Receipt Requested to the parties at the following addresses or at such other addresses as each party may notify the other.


If to Lessor: National Railway Equipment Co.
 P.O. Box 2270
 Dixmoor, IL 60426

If to Lessee: Mr. Harry K. Baldaccini
 Director
 Locomotive Planning
 The Burlington and Northern Santa Fe Railway
 Company
 Hill Building (NOC)
 2600 Lou Menk Drive
 Fort Worth, Texas 76131

WITNESS WHEREOF, the parties have executed this Lease the day and year first mentioned above.

LESSOR:


NATIONAL RAILWAY EQUIPMENT CO.

BY: 

NAME: Patrick C. Frangella

TITLE: Vice President

ATTEST:

BY: 


NAME: Jerry J. Massie

TITLE: Corporate Controller

(Corporate Seal)

LESSEE:

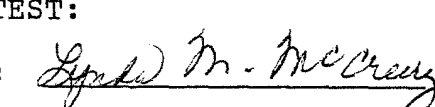
THE BURLINGTON NORTHERN
AND SANTA FE RAILWAY COMPANY

BY: 

NAME: Harry Ballaccini

TITLE: Director Loco Planning & Leasing

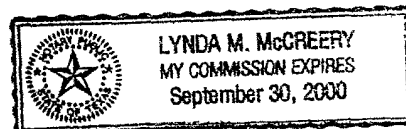
ATTEST:

BY: 

NAME: Lynda M. McCreery

TITLE: Admin. Asst.

(Corporate Seal)



SCHEDULE "A"

Attached to and incorporated into the Lease dated the 24th day of October, 1997, by and between NATIONAL RAILWAY EQUIPMENT COMPANY (LESSOR) and THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY (LESSEE).

Type and General Description of Locomotive Unit and Numbers:

<u>UNIT</u>	<u>REPLACEMENT VALUE</u>	<u>SERVICE DATE</u>	<u>TYPE</u>	<u>DESCRIPTION</u>	<u>TERM</u>	<u>DAILY RATE</u>
3065	\$XXX,XXX.XX	3/17/98	SD40	ROAD LOCOMOTIVE	365 DAYS	\$XXX.XX
3076	\$XXX,XXX.XX	1/30/98	GP40	ROAD LOCOMOTIVE	365 DAYS	\$XXX.XX
3107	\$XXX,XXX.XX	12/10/98	SD40	ROAD LOCOMOTIVE	365 DAYS	\$XXX.XX
3140	\$XXX,XXX.XX	1/10/98	GP40	ROAD LOCOMOTIVE	365 DAYS	\$XXX.XX
3186	\$XXX,XXX.XX	12/30/97	SD40	ROAD LOCOMOTIVE	365 DAYS	\$XXX.XX
5339	\$XXX,XXX.XX	00/00/00	SD45	ROAD LOCOMOTIVE	365 DAYS	\$XXX.XX
5486	\$XXX,XXX.XX	00/00/00	B30-7	ROAD LOCOMOTIVE	365 DAYS	\$XXX.XX
5487	\$XXX,XXX.XX	11/6/97	B30-7	ROAD LOCOMOTIVE	365 DAYS	\$XXX.XX
5488	\$XXX,XXX.XX	11/15/97	B30-7	ROAD LOCOMOTIVE	365 DAYS	\$XXX.XX
5489	\$XXX,XXX.XX	00/00/00	B30-7	ROAD LOCOMOTIVE	365 DAYS	\$XXX.XX
6564	\$XXX,XXX.XX	3/17/98	SD40-2	ROAD LOCOMOTIVE	365 DAYS	\$XXX.XX
7200	\$XXX,XXX.XX	12/2/98	GP40X	ROAD LOCOMOTIVE	365 DAYS	\$XXX.XX
8147	\$XXX,XXX.XX	3/5/98	C30-7	ROAD LOCOMOTIVE	365 DAYS	\$XXX.XX
9323	\$XXX,XXX.XX	1/30/98	C30-7	ROAD LOCOMOTIVE	365 DAYS	\$XXX.XX
9503	\$XXX,XXX.XX	1/28/98	C30-7	ROAD LOCOMOTIVE	365 DAYS	\$XXX.XX
9525	\$XXX,XXX.XX	3/21/98	C30-7	ROAD LOCOMOTIVE	365 DAYS	\$XXX.XX
9531	\$XXX,XXX.XX	2/17/98	C30-7	ROAD LOCOMOTIVE	365 DAYS	\$XXX.XX
9538	\$XXX,XXX.XX	3/19/98	C30-7	ROAD LOCOMOTIVE	365 DAYS	\$XXX.XX
9541	\$XXX,XXX.XX	3/07/98	C30-7	ROAD LOCOMOTIVE	365 DAYS	\$XXX.XX
9553	\$XXX,XXX.XX	3/07/98	C30-7	ROAD LOCOMOTIVE	365 DAYS	\$XXX.XX
9561	\$XXX,XXX.XX	2/22/98	C30-7	ROAD LOCOMOTIVE	365 DAYS	\$XXX.XX

OPTION TO RENEW:

The Lessee shall have the option to renew this Lease Agreement for two additional one (1) year terms by sending Lessor written notice not less than ninety (90) days prior to the expiration of the applicable term. The terms shall be priced as follows:

Year No. 2: \$XXX.XX Per Day Per Locomotive
Year No. 3: \$XXX.XX Per Day Per Locomotive

CANCELLATION CLAUSE:

The Lessee shall have the option to cancel this Lease Agreement at any time by notifying Lessor of such cancellation in writing as follows:

Year No. 1: Sixty (60) Days Prior To Termination
Year No. 2: Forty-Five (45) Days Prior To Termination
Year No. 3: Thirty (30) Days Prior To Termination

PENALTIES:

Lessee, in the event of early termination of the Lease Agreement, shall be obligated to pay to Lessor the following penalties.

Year No. 1:	None
Year No. 2:	\$XX.XX Per Day Per Unit
Year No. 3:	\$XX.XX Per Day Per Unit

COMMENCEMENT DATE: The commencement date of each locomotive shall be the actual in service date.

LESSOR: NATIONAL RAILWAY EQUIPMENT COMPANY

BY: 

TITLE: Vice President

LESSEE: THE BURLINGTON NORTHERN AND SANTA
FE RAILWAY COMPANY

BY: 

TITLE: DIA Loco Planning & Leasing